

PT 02-6

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**JOHN DAVID
MOONEY FOUNDATION,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 99-PT-0008
(97-16-0992)**

P.I.N.: 17-09-260-018

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Craig J. Donnewald of Finkel, Martwick & Colson and Mr. Jeffery B. Frishman of Winston & Strawn on behalf of the John David Mooney Foundation (hereinafter the “applicant”) .

SYNOPSIS: This proceeding raises the following issues: (1) whether applicant qualifies as an “institution of public charity” within the meaning of Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* (hereinafter the “Code”); and, (2) whether real estate identified by Cook County Parcel Index Number 17-09-260-018 (hereinafter the “subject property”) was “actually and exclusively used for charitable or beneficent purposes,” as required by Section 15-65 during any part of the 1997 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on June 10, 1998. The Board reviewed this

complaint and recommended to the Illinois Department Of Revenue that “no action” be taken as to the requested exemption. Dept. Ex. No. 1-B. The Department then issued its initial determination herein on December 10, 1998, which found that the subject property was not in exempt ownership and not in exempt use. Dept. Ex. No. 1-C. Applicant filed a timely appeal to this denial and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at hearing, I recommend that the Department’s determination in this matter be affirmed.

FINDINGS OF FACT:

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matters and its position therein are established by the admission into evidence of Dept. Nos. 1-A, 1-B and 1-C.
2. The Department’s position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Group Ex. No. 1-C.
3. The subject property is located at 114 W. Kinzie Street, Chicago, IL and improved with a 5 story, 19,000 square foot visual arts studio. Dept. Group Ex. No. 1-B.

B. Applicant’s Organizational and Operational Structure

4. Applicant is an Illinois not for profit corporation which, per its Articles of Incorporation, is organized for purposes of aiding and assisting “in the development and promotion of artistic and educational activities through the dissemination of information, the funding and establishment of projects and student apprenticeships and any other method designed to promote and

advance the development of art, sculpture, architecture and similar fine arts.”

Applicant Ex. No. 2.

5. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service on May 18, 1992. This exemption remained in full force and effect throughout the 1997 tax year. Applicant Ex. No. 6.

6. In general, applicant’s operations center around: (a) presenting various art exhibitions; (b) sponsoring various symposia, lectures and other informational presentations on art, architecture and related topics; and, (c) providing apprenticeships and internships to qualified students with terminal degrees in art-related fields. Applicant Ex. Nos. 16, 17, 18, 19,20, 21, 22, 28.

7. Applicant offered the following art exhibitions, lectures and related activities during 1997:

PROGRAM NAME	DATE(S)	BRIEF DESCRIPTION
Public Art for Equitable Plaza	1/8/87 – 3/2/87	<ul style="list-style-type: none">• Exhibition produced by applicant’s interns which centered on how sculpture and other artwork might be used to beautify the Equitable Plaza.
Journey to Conscience	3/14/97 – 4/19/97	<ul style="list-style-type: none">• Exhibition of the paintings of Spanish artist Pilar Insertis.
Mackintosh: Symbolist or Modernist?	3/19/97	<ul style="list-style-type: none">• Lecture by William Hardie, an internationally renowned authority on the artwork of Scotch painter Charles Rennie Mackintosh.
Tour of Pillar Insertis	3/19/97	<ul style="list-style-type: none">• Tour given to 20 art students at Robert

exhibition		Morris College.
Reception	4/17/97	<ul style="list-style-type: none"> • Reception given in connection with the Pilar Inertis exhibit.

PROGRAM NAME (Cont'd.)	DATE(S)	BRIEF DESCRIPTION
Language of Time	5/8/97 – 5/20/97	<ul style="list-style-type: none"> • Exhibition of recent Australia Aboriginal art; • Tours given to students at Robert Morris College and other community groups.
Light Muse	6/10/97 – 6/15/97	<ul style="list-style-type: none"> • Project celebrating the Chicago Tribune's 150th anniversary; • Interns made models, created design solutions and then, with volunteer assistance, actually implemented special illuminations of the Chicago Tribune Tower.
Exhibition	6/97 – 7/97	<ul style="list-style-type: none"> • Two month exhibition of design options for the Light Muse project.
Workshop	6/3/97	<ul style="list-style-type: none"> • Workshop for students from the Parnham Trust School in England which focused on furniture and industrial design for public spaces.
Workshop	6/4/97	<ul style="list-style-type: none"> • Workshop for students of the School of the Art Institute which focused on furniture and industrial design for public spaces.
Reception	7/1/97	<ul style="list-style-type: none"> • Reception for the Light Muse exhibition.

Exhibition	10/6/97 – 12/23/97	<ul style="list-style-type: none"> Exhibition of public sculpture designs for the CNA building.
Reception	10/8/97	<ul style="list-style-type: none"> Reception for Friends of the National Gallery of Ireland.
Seminar	10/22/97	<ul style="list-style-type: none"> Seminar concerning design of the Chicago Millennium Park.
“Chicago Festival Grounds”	10/21/97 – 11/9/97	<ul style="list-style-type: none"> Exhibition featuring design solutions for Millennium Park presented by fifth year landscape architecture students at Purdue University.

PROGRAM NAME (Cont’d,)	DATE(S)	BRIEF DESCRIPTION
Opening Reception	10/22/97	<ul style="list-style-type: none"> Reception celebrating opening of the “Chicago Festival Grounds” exhibit, sponsored by Friends of Downtown and the Greater State Street Council.
Lecture	11/6/97	<ul style="list-style-type: none"> Kent Schuette, professor of landscape architecture at Purdue University and John David Mooney, applicant’s artistic director, spoke about the “Chicago Festival Grounds Exhibit” at the Chicago Cultural Center.
EnLIGHT	11/10/97 – 2/15/98	<ul style="list-style-type: none"> Exhibition featuring public sculpture for Edinburgh, Scotland’s pedestrian spaces.
Lecture	11/19/97	<ul style="list-style-type: none"> John David Mooney presented a lecture on the “Chicago Festival Grounds” exhibit to the Grant Park Advisory Council.

Light Muse	11/21/97- 12/23/97	<ul style="list-style-type: none"> • Light Muse illuminations display was re-installed at the Tribune Tower; • Light Muse exhibition, which featured: (a) various design solutions for the Tribune Tower; and, (b) the final model actually employed for special illuminations of the Tribune Tower, was reinstalled at the subject property.

Applicant Ex. Nos. 17, 18, 19, 20, 21, 22, 27.

8. Applicant's apprentice and internship programs provide intense advanced study in practical aspects of design-related fields to persons with terminal degrees in various design-related fields including architecture, art history, urban planning and arts administration. Applicant Ex. No. 28.
9. Each internship lasts between 3 and 6 months; each apprenticeship between 6 months and 2 years. *Id.*
10. Those wishing to apply for internships must have undergraduate standing or be architectural candidates in M.A. programs or thesis candidates in an M.F.A. program. *Id.*
11. Those wishing to apply for apprenticeships must: (a) have practiced their art professionally for an unspecified period of time; (b) have demonstrated "outstanding merit" or made "significant contributions" through their art; and, (c) be willing to participate in projects "which bridge the relationship between Art and Architecture, as well as ... assist in generating activities which weave art into the public domain." *Id.*

12. Any qualified person who wishes to apply for an internship or apprenticeship may do so, provided that they complete an application form and submit samples of their work. *Id.*
13. The application form contains, *verbatim*, the following statement concerning tuition and scholarships:

Apprentices

The tuition for an Apprentice, for one year, is \$14,000.00.

Interns

Internships are awarded for a period of three months, and six months. The tuition for a three-month Internship is \$3,500.00. The tuition for a six-month internship is \$7,000.00; this program involves intensive, in depth training in inter disciplinary areas. For both Apprentices and Interns, the tuition includes a communal meal in the studio. The foundation will assist candidates for the Apprenticeship and Internship program in finding accommodations.

Fellowships

The Lorado Taft Fellowship is awarded to an outstanding candidate for the Apprenticeship Program. This fellowship is available only to a candidate who has completed an Internship at the Foundation.

The Walter Netsch Fellowship is awarded to an outstanding candidate for the Internship Program.

This is available only to a candidate who has completed successfully the first three months of the Internship. The Foundation offers two additional scholarships with a partial, tuition free waiver; one is for beginning Interns, and one for Apprentices. Both the Fellowship and the Scholarship are awarded after a review of achievements, by a distinguished jury.

Applicant Ex. No. 28.

14. All applications are screened by a jury of experts, which then selects the interns and apprentices based on artistic merit. *Id*; Tr. p. 250.

C. Applicant's Financial Structure

15. Applicant's federal income tax return for the 1997 assessment year reveals the following about its financial structure:

REVENUES	AMOUNT	% OF TOTAL¹
Contributions/Direct Public Support	\$ 15,215.00	93%
Interest on Savings	\$ 1,060.00	6%
Dividends/Interest for Securities	\$ 95.00	1%
TOTAL REVENUES	\$ 16,370.00	
EXPENSES		
Program Services	\$ 2,550.00	9%
Management & General Operating	\$ 26,138.00	91%
TOTAL	\$ 28,688.00	

Applicant Ex. No. 24.

16. An unaudited income and expense report for 1997 reveals the following additional information about applicant's financial structure:

INCOME	AMOUNT	% OF TOTAL
Cash Donations		
Private Sector	\$ 7,582.00	47%
Business Sector	\$ 5,708.00	35%
Gifts to Establish Scholarship	\$	12%

1. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses shown on the relevant line of the second column. Thus, \$15,215.00 / \$16,370.00 = .9294 (rounded four places past the decimal) or 93%.

	1,925.00	
Bank Interest Income	\$ 1,060.37	7%
Total Income	\$ 16,275.37	
EXPENSES		
Postage for Mailings	\$ 1,621.21	59%
Exhibition & Lecture	\$ 329.16	12%
Honorarium	\$ 600.00	22%
Professional Fees	\$ 145.00	5%
Bank Service Charges	\$ 60.00	2%
Total Expenses	\$ 2,755.37	100%

Applicant Ex. No. 23.

D. Applicant's Ownership and Use of the Subject Property

17. Applicant had been occupying parts of the building improvement situated on the subject property as a tenant prior to obtaining ownership thereof via a warranty deed dated May 31, 1997. Applicant Ex. No. 9; Tr. pp. 29-30.

18. Applicant had been using the parts of the building that it leased as its base of operations from 1981 through the date of purchase. Tr. pp. 29-30.

19. Applicant proceeded to occupy the entire building, and expand its base of operations to all spaces therein, once it obtained ownership of the subject property. Applicant Ex. No. 16, Tr. pp. 30-31.

CONCLUSIONS OF LAW:

An examination of the record establishes that applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from real estate taxes for any part of the 1997 assessment year. Accordingly, under the reasoning given below, the determination by the Department that said property does not qualify for such exemption under 35 ILCS 200/15-65(a) should be affirmed. In support thereof, I make the following conclusions:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-1, *et seq.* (hereinafter the "Code"). The Code provisions that govern disposition of the present matter are contained in 35 ILCS 200/15-65(a), which provides for the exemption of:

200/15-65. Charitable Purposes

15-65. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 ILCS 200/15-65(a)

B. The Burden of Proof and Other Introductory Considerations

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Furthermore, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994). Therefore, any and all doubts that arise in an exemption proceeding, whether they be attributable to evidentiary deficiencies, debatable factual interpretations or questions of statutory construction, must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*.

C. The Charitable Exemption - 35 ILCS 200/15-65(a)

The statutory requirements for exemption under Section 15-65(a) are: (1) exempt ownership, which means that the property in question must be owned by a duly qualified "institution of public charity" (Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968)); and, (2) exempt use, which means that the property must be exclusively or primarily used for the purposes that qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home, *supra*; Morton Temple Association, 158 Ill.

App. 3d 794, 796 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991).

Here, applicant was actively using the subject property as its base of operations throughout the period currently under review.² These uses enabled applicant to fulfill its organizational mission of promoting the visual arts. Therefore, the threshold question herein is whether applicant qualifies as an "institution of public charity."

1. Lack of Exempt Ownership

By definition, an "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduces the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, *supra*.

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such

2. That period runs from the date applicant acquired ownership of the subject property, May 31, 1997, through the end of the 1997 assessment year, December 31, 1997. *See*, Applicant Ex. No. 9.

as those of its own dues-paying members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

Fine arts organizations, such as applicant, can qualify for exempt status, but only if they present clear and convincing evidence demonstrating that they: (a) operate primarily in the public interest (Randolph Street Gallery, *supra*); and, (b) do not place exclusionary obstacles in the way of anyone seeking to receive their services. (Resurrection Lutheran Church v. Department of Revenue, 212 Ill. App.3d 964 (1st Dist. 1991)).

In this case, there exists a crucial evidentiary inconsistency in the proofs by which applicant sought to establish the "charitable" nature of two critical elements of its programming, those being its apprenticeships and internships. Applicant's administrator, Barbara Jones, and its artistic director, John David Mooney, specifically testified that applicant does not charge tuition or any other kind of fees to anyone participating in these programs. (Tr. pp. 71-73, 245-258, 280-282, 288-289).³ If, however, the internships and

3. The critical components of Mr. Mooney's testimony on this issue are as follows:

Q. [By applicant's counsel] You don't pay your interns a salary or a bonus?

A. [By Mr. Mooney] No. Do Not.

Q. Or a fee?

A. No.

Q. And do they pay for the experience?

A. They do not pay for the experience.

Q. It's provided free for anybody who is accepted?

-
- A. Anybody who is accepted, it is provided free.
- Q. Consistent with every other program in the Foundation?
- A. Consistent with every program in the Foundation.
- Q. When I look at the material [Applicant Ex. No. 28], there is a stated value, if you will, of \$3,500.00 per quarter or \$14,000.00 per year. Can you explain that?
- A. Yes. That is to show the value of the - the teaching that they are receiving the - of the teaching that they are receiving, equivalent to what they are used to coming from a university community where they have in the past had to pay tuition for the experience of learning. And here we state that as a value. It is also in the nature of the fact is that we are giving our teaching and the experience to these interns and apprentices, and its like gift wrapping. If you are going to get a gift, it's very nice to have it all wrapped up in nice ribbons and, you know, it's going to be well worth something even if it's a small little token in - on the inside. We don't consider this a token, but that's a gift wrapping. That's why we said this training that you are receiving is very valuable.
- Q. And what is the purpose of apprising them of the value?
- A. Because they then have a sense of self-worth; that the time they spend in terms of the cultural in which we live, that time is money, vice versa, and that they understand that the process they are going through has - has a market value. And also for the younger 22-23-year old candidates, it appeases their candidates who might have already spent fourteen, fifteen thousand dollars on their college education, and then looks a little bit more redeeming.
- Q. If you waive - any maybe you've already answered this question. If you waive for everybody and you don't charge anybody, why list it? Why not just - I mean shouldn't they know, I guess is my question. Shouldn't they be aware of the value of the apprenticeship anyways. [sic] And - or do you feel that ... there is something extra special that you are trying to impart by placing a value?
- A. I think there is something extra, and that is the gift wrapping. It is the wrapping of the gift wrapping. It is the wrapping of the gift which we are giving that they are in turn going to give away, that, even though we state this, it is - it is inherent in showing the value, and it is consistent with the fact there is never a charge. They are never charged that, and there has never been an intern or an apprentice who has ever.
- Q. How early in the process, in the - when do you find out? When does the prospective intern or apprentice find out that there is a fee waiver?
- A. There is always an interview process. And so we are covering who this person is, and they have - they are told at that time that they needn't worry about the fact that - if having to spend more money, because if they are chosen, this is the gift which they are receiving.
- Q. So every application has an interview associated with it?
- A. Every application has an interview.
- Q. And it's during that initial interview that you explain to a person that there is no charge; if you are chosen, don't worry about it?

apprenticeships were truly as “charitable” as Ms. Jones and Mr. Mooney portrayed, then it would be quite unnecessary for the brochure that describes these programs (Applicant Ex. No. 28) to contain any information whatsoever about the financial assistance which applicant makes available in connection therewith. This assistance, which takes the form of fellowships and scholarships, is specifically described in Applicant Ex. No. 28 as follows:

Fellowships

The Lorado Taft Fellowship is awarded to an outstanding candidate for the Apprenticeship Program. This fellowship is available only to a candidate who has completed an Internship at the Foundation.

The Walter Netsch Fellowship is awarded to an outstanding candidate for the Internship Program.

This is available only to a candidate who has completed successfully the first three months of the Internship. The Foundation offers two additional scholarships with a *partial, tuition free waiver*; one is for beginning Interns, and one for Apprentices. Both the Fellowship and the Scholarship are awarded after a review of achievements, by a distinguished jury.

Applicant Ex. No. 28. [Emphasis added].

The above information makes specific reference to a partial tuition waiver, which would be totally unnecessary if applicant were not charging tuition in the first place.

A. Exactly. And it is part of the interviews.

Q. And that's part of the philosophy of your organization because it's about circular giving -

A. That's right. Exactly.

Tr. pp. 249 - 254.

Ms. Jones's testimony, found at Tr. pp. 71-73, is to the same effect.

Furthermore, the specific statement, also contained in Applicant Ex. No. 28, that "the tuition *includes* a communal meal in the studio"⁴ would likewise be completely superfluous. Applicant Ex. No. 28 [Emphasis added].

As a result of the above inconsistencies, the credibility of Mr. Mooney and that of Ms. Jones is raised, and the doubts raised by these inconsistencies are apparent. I conclude, after viewing the witnesses and carefully reviewing their testimony, that neither Mr. Mooney nor Ms. Jones offered credible testimony. At the least, however, all doubts must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*.

In addition, Applicant Ex. No. 28 plainly states that applicant does in fact charge substantial sums of money as tuition for its apprenticeship and internship programs. Such statements effectively deter, and therefore exclude from the initial application process, persons who can not afford to make tuition payments in the first place.

Further, although persons might be eligible for a fellowship or a scholarship of the type described in Applicant Ex. No. 28, the wording of this document, which uses superlatives such as "outstanding" to describe scholarship and fellowship recipients, implies that applicant provides these awards only to those artisans who are able to

4. That statement reads, in context, as follows:

Internships are awarded for a period of three months, and six months. The tuition for a three-month Internship is \$3,500.00. The tuition for a six-month internship is \$7,000.00; this program involves intensive, in depth training in inter disciplinary areas. For both Apprentices and Interns, the tuition includes a communal meal in the studio. The foundation will assist candidates for the Apprenticeship and Internship program in finding accommodations.

Applicant Ex. No. 28.

demonstrate a highly exacting level of artistic merit in their work. The practical effect of basing these awards on artistic merit, rather than demonstrated financial need, is to create monetary incentives for a very select group of artisans. Providing such incentives is inconsistent with dispensation of “charity” in that the financial benefits associated therewith do not represent accommodations for those who are unable to pay. Small v. Pangle, 60 Ill.2d 510, 518 (1975). Therefore, the “charitable” nature of applicant’s fellowships and scholarships is completely illusory.

Notwithstanding the above, Applicant Ex. No. 24 clearly states that only an “outstanding” few persons actually receive these monetary incentives. Such a paucity of recipients establishes that the primary purpose of applicant’s apprenticeship and internship programs is to provide artistic training to those artisans who can afford to pay for it. Consequently, whatever “charity” applicant may dispense while providing monetary incentives therefor, is illusory in the first instance and incidental to that non-exempt purpose in the second.

Incidental acts of beneficence, such as those described above, are legally insufficient to qualify applicant for exempt status. *Accord*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). This is especially true where, as here, such incidental acts are undertaken in furtherance of programs that employ highly exclusionary selection procedures.

These procedures consist of at least one required interview (Tr. pp. 252-253) and a judging of submissions by a panel of artistic experts. (Tr. pp. 246-247; Applicant Ex. No. 28). While this panel does welcome submissions from anyone who wishes to apply

(Tr. p. 246), it does *not* accept everyone who submits an application. (Tr. p. 250). Rather, the panel accepts only those relatively few artisans whose submissions reflect the very high level of artistic merit that applicant requires of its apprentices and interns. (Applicant Ex. No. 28).

Such procedures are inherently exclusionary toward those whose submissions do not display the requisite level of artistic merit. More importantly, those excluded via such procedures do not receive the training and other benefits that applicant confers on the relatively few artisans it accepts as apprentices and interns. Hence, applicant operates these programs primarily for the benefit that relatively limited class of artisans. Accordingly, I conclude that applicant's apprenticeship and internship programs do not satisfy the definitional requirement of operating primarily for the benefit of an "indefinite" number of persons. Crerar v. Williams, *supra*. Therefore, that portion of the Department's determination which found that the subject property is not in exempt ownership because it not owned by a duly qualified "institution of public charity," as required by 35 ILCS 200/15-65(a), should be affirmed.

2. Lack of Exempt Use

The word "exclusively" when used in Section 15-65(a) and other property tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Here, the exclusionary process by which applicant selects its apprentices and interns implies that the subject property was primarily used as a venue for providing artistic training to that relatively select group of apprentices and interns. Thus, whatever "charitable" uses applicant may have effectuated

through symposia, lectures, tours and the like were clearly incidental to that non-exempt use.

Such incidental uses are legally insufficient to establish that the subject property was "exclusively used for charitable or beneficent purposes," within the meaning of 35 **ILCS** 200/15-65, during the period in question." Pontiac Lodge, *supra*. Moreover, any residual doubts as to whether said property was in exempt use must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. Therefore, that portion of the Department's determination which found that the subject property is not in exempt use should be affirmed.

In summary, the logical inconsistencies between the testimonial and documentary evidence concerning applicant's internship and apprenticeship program prevent me from concluding that applicant qualifies as an "institution of public charity" within the meaning of Section 15-65(a) of the Property Tax Code. However, even if these inconsistencies did not exist, the exclusionary process by which applicant selects its apprentices and interns is distinctly non-charitable in that it benefits only a relatively select group of persons. Therefore, the Department's determination herein, denying the subject property exemption from real estate taxes for the period May 31, 1997 through December 31, 1997 under 35 **ILCS** 200/1-1, *et seq.*, should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that Real estate identified by Cook County Parcel Index Number 17-09-260-018 not be

exempt from real estate taxes for any part of the 1997 assessment year under Section 15-15-65(a) of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

December 18, 2001

Date

Alan I. Marcus
Administrative Law Judge